Laro Maintenance Corporation *and* Local 32B-32J, Service Employees International Union, AFL–CIO. Case 2–CA–31249

April 13, 2001

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND HURTGEN

On July 8, 1999, Administrative Law Judge D. Barry Morris issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed cross-exceptions, a supporting brief, and an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.[1]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Laro Maintenance Corporation, New York City, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Jessica Drangel, Esq., for the General Counsel.
Clifford P. Chaiet, Esq. (Naness, Chaiet & Naness), of Jericho, New York, for the Respondent.
Ira A. Sturm, Esq. and *Ronald A. Goldman, Esq. (Raab & Sturm),* of New York, New York, for the Charging Party.

DECISION

STATEMENT OF THE CASE

D. BARRY MORRIS, Administrative Law Judge. This case was heard before me in New York City, New York, on April 19, 1999. On a charge filed on February 17, 1998,[1] a complaint was issued on December 9, alleging that Laro Maintenance Corporation (Respondent) violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). Respondent filed an answer denying the commission of the alleged unfair labor practice.

The parties were given full opportunity to participate, produce evidence, examine and cross-examine witnesses, argue orally, and file briefs. Briefs were filed by counsel for the General Counsel and Respondent on June 11, 1999.

On the entire record of the case, including my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, Laro Maintenance Corporation, a New York corporation, with an office and place of business in Bayshore, New York, provides building service and maintenance to commercial customers, including the Port Authority Bus Terminal located in New York City, New York, the only facility involved in this proceeding. Respondent admits, and I so find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. In addition, it has been admitted, and I so find, that Local 32B-32J, Service Employees International Union, AFL–CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICE

A. The Facts

In late 1995, Respondent assumed the contract with the Port Authority for the janitorial work at the Port Authority Bus Terminal. At that time, Respondent hired a majority of its employees from its predecessor, Dunn & Son. Those employees had previously been represented by the Union. Respondent recognized the Union after having hired the former Dunn & Son employees. In January 1996, Respondent's employees struck. The strike lasted approximately 6 months. On September 27, 1997, the Region approved a settlement agreement concerning various unfair labor practice charges which the Union had filed. The settlement agreement provided for a preferential list for permanent workers to be comprised of former Dunn & Son employees who were not hired by Respondent. In addition, the settlement agreement contained the names of four employees who were to be given preference for standby work. While the settlement agreement was not implemented until January 1999, Respondent's policy was to follow the terms of the agreement with respect to standby employees. Thus, in a letter dated December 18, 1997, from Clifford Chaiet, counsel to Respondent, it was stated, "Laro's policy with regard to the use of stand-by employees is simple. Laro is abiding by the terms of the settlement . . . which requires Laro to offer stand-by . . . opportunities to the former Dunn & Son employees on the schedule appended to the settlement papers."

On January 7, 1998, Chaiet advised Ira Sturm, counsel to the Union, that Respondent expected to lay off approximately 16 employees. By letter dated January 14, Chaiet advised Ron Goldman, cocounsel to the Union, that the laid-off employees "will be placed at the top of the standby list." This had the effect of removing the four former Dunn & Son employees from being at the top of the standby list. The layoff was to become effective the following day, on January 15. Goldman testified that on

[1] In cross-exceptions, the General Counsel raises issues arising from a settlement agreement entered into by the General Counsel and the Respondent which resolved prior unfair labor practice charges involving the same parties in Cases 2–CA–29598, et. al. Specifically, the General Counsel asks us to rule on whether the judge accurately characterized the settlement agreement's provisions and also to change the proposed remedy in this case to reflect that the Respondent's rescission of the unilateral change and its return to the status quo ante must be consistent with the settlement agreement in the other case. We decline to rule on these issues at this time. While agreed to prior to the unilateral change at issue in this case, the settlement agreement was not formally approved and implemented until a year after its occurrence. Further, the complaint in this case does not allege that the Respondent was not adhering to the settlement agreement. Consequently, we do not pass on the judge's description of the settlement agreement or its effect on the remedy here. We will leave these issues to compliance or other proceedings arising out of the instant case or in Cases 2–CA–29598, et al.

[1] All dates refer to 1998 unless otherwise specified.

January 14, after he received the letter, he telephoned Chaiet and told him that changing the method of hiring standby employees "is going to open a whole new can of worms. That they were, meaning Laro, . . . supposed to be abiding by the settlement. And they could not just put these people on the top of the list like that." Chaiet responded, "[T]his is what Laro is doing." Goldman testified that there had been no discussion of the change in the standby policy prior to the January 14 letter.

B. Discussion and Conclusions

The Board has long held that a reasonable time between notifying the Union of a proposed change and its implementation is required under an employer's obligation to bargain in good faith. As was stated in *Ciba-Geigy Pharmaceuticals Division,* 264 NLRB 1013, 1017 (1982), enfd. 722 F.2d 1120 (3rd Cir. 1983):

> To be timely, the notice must be given sufficiently in advance of actual implementation of the change to allow a reasonable opportunity to bargain. However, if the notice is too short a time before implementation or because the employer has no intention of changing its mind, then the notice is nothing more than informing the union of a *fait accompli.* [Footnotes omitted.]

In *S & I Transportation, Inc.,* 311 NLRB 1388 (1993), the Board held that the employer violated the Act by notifying the union of the proposed change 2 days before its implementation. In the instant proceeding, Respondent notified the Union of the proposed change on January 14, only 1 day before its implementation. When Goldman protested the change, Chaiet responded, "[T]his is what Laro is doing." I find that Respondent's notification to the Union of the proposed change on January 14, 1 day before its implementation, amounted to the announcement of a fait accompli. In so doing, Respondent engaged in a unilateral change, without affording the Union an opportunity to bargain, in violation of Section 8(a)(1) and (5) of the Act.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By unilaterally changing its hiring policy with respect to standby employees, without giving the Union sufficient time to be able to bargain, Respondent has engaged in an unfair labor practice within the meaning of Section 8(a)(1) and (5) of the Act.
4. The aforesaid unfair labor practice constitutes an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent engaged in an unfair labor practice, I shall order Respondent to cease and desist therefrom and to take certain affirmative action necessary to effectuate the policies of the Act. Having found that Respondent violated the Act by unilaterally changing its practice with respect to hiring standby employees, without adequate notice to and bargaining with the Union, I shall order Respondent, on request from the Union, to restore the status quo by rescinding the unilateral change, and make all affected employees whole for losses they incurred by virtue of the unilateral change, in accordance with *Ogle Protection Service,* 183 NLRB 682 (1970), with interest as prescribed in *New Horizons for the Retarded,* 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[2]

ORDER

The Respondent, Laro Maintenance Corporation, New York City, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally changing its hiring policy with respect to standby employees without giving sufficient prior notice to the Union as the exclusive representative of the employees in the appropriate bargaining unit.

(b) Refusing to bargain with the Union in the following appropriate unit:

> All custodial employees employed by Respondent at the Port Authority Bus Terminal located at 42nd Street and Eighth Avenue, New York, NY, excluding all other employees, guards, professional employees and supervisors as defined in the Act.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and if understandings are reached, embody such understandings in signed agreements.

(b) On request of the Union, rescind the unilateral change and make whole affected employees for losses incurred by virtue of the unilateral change, with interest, as prescribed in the remedy section of the decision.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at the Port Authority Bus Terminal in New York City, New York, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representa-

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[3] If this Order is enforced by a judgment of the United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

tive, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 14, 1998.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT unilaterally change our hiring policy with respect to standby employees without giving sufficient prior notice to the Union.

WE WILL NOT refuse to bargain with the Union in the following appropriate unit:

> All custodial employees employed by us at the Port Authority Bus Terminal excluding all other employees, guards, professional employees and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request of the Union, bargain collectively with the Union, as the exclusive representative of the employees in the aforesaid appropriate unit, and if understandings are reached, embody such understandings in signed agreements.

WE WILL, on request of the Union, rescind the unilateral change and make whole affected employees for losses incurred by virtue of the unilateral change, with interest.

LARO MAINTENANCE CORPORATION